Veterans Foreign Wars Club *and* Hotel, Motel, Hospital, Restaurant Employees & Bartenders Union Local 369, a/w Hotel Employees & Restaurant Employees International Union. Case 18–CA–13311

February 24, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND BROWNING

Upon a charge filed by the Union on October 5, 1994, the General Counsel of the National Labor Relations Board issued a complaint on December 7, 1994, against Veterans Foreign Wars Club, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On January 27, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On January 31, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated January 10, 1995, notified the Respondent that unless an answer were received by January 18, 1995, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Minnesota corporation with an office and place of business in Albert Lea, Minnesota, has been engaged in the operation of a social club and the sale of food, drinks, and services to members and their guests. At all material times, the On-Sale Liquor Dealers of the City of Albert Lea, Minnesota (the Association) has been an organization composed of various employers engaged in the operation of private membership clubs in the Albert Lea, Minnesota area, one purpose of which is to represent its employer-members in negotiating collective-bargaining agreements with the Union. At all material times, the Respondent has been an employer-member of the Association and has delegated the Association to represent it in negotiating and administering collective-bargaining agreements with the Union. During the year ending December 31, 1993, the employer-members of the Association, in conducting their business operations, collectively derived gross revenues in excess of $500,000 and collectively purchased and received at their Albert Lea, Minnesota facilities goods valued in excess of $5000 from enterprises located within the State of Minnesota, each of which enterprises had received these goods directly from points outside the State of Minnesota. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Since on or about June 10, 1994, the Respondent has interfered with, restrained, and coerced employees in the exercise of rights guaranteed by Section 7 of the Act by engaging in the following acts and conduct. On about June 10, 1994, the Respondent solicited employees as to whether they wished to discontinue paying union dues by dues checkoff. In or about early September 1994, and on or about September 13, 1994, the Respondent solicited employees to sign a petition to have the Union decertified.

The following employees of the employer-members of the Association constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time bartenders, janitors, cooks, waiters/waitresses, and kitchen helpers employed by members of the Association at their Albert Lea, Minnesota facilities; excluding office clerical employees, professional employees, guards and supervisors, as defined in the Act.

At all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and has been recognized as such representative by the employer-members of the Association. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period June 1, 1994, to May 31, 1995.

At all material times, the Union, by virtue of Section 9(a) of the Act, has been the exclusive collective-bargaining representative of the unit.

At all material times, the Union has requested the Respondent, as part of the Association, to recognize it as the exclusive collective-bargaining representative of the unit and to bargain collectively, as part of the Association, with the Union as the exclusive collective-bargaining representative of the unit.

Since on or about June 1, 1994, the Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit by engaging in the following acts and conduct. On or about June 1, 1994, the Respondent failed to pay its employees the wage rates agreed to in the parties' collective-bargaining agreement that expired on May 31, 1994. This subject relates to wages, hours, and other terms and conditions of employment of the unit and is a mandatory subject for the purposes of collective bargaining. The Respondent engaged in this conduct without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct. Since about August 1994, the Respondent has utilized volunteer bartenders to perform unit work. On or about September 13, 1994, the Respondent bypassed the Union and dealt directly with employees over their terms and conditions of employment.

On or about September 22, 1994, the Union and the Association reached agreement on terms and conditions of employment of the unit to be incorporated in a collective-bargaining agreement. Since about September 22, 1994, the Union has requested the Respondent to execute the written contract containing this agreement, but since about the same date, the Respondent has failed and refused to do so.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit and has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed by Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.[1]

[1] The complaint does not affirmatively state that the use of volunteer bartenders to perform unit work is a mandatory subject or bargaining or a unilateral change. We will leave resolution of this issue to the compliance stage of the proceedings at which time we will allow the Respondent to raise the issue. See *Harabedian Paving Co.*, 313 NLRB 1079, 1080 fn. 2 (1994).

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) by unilaterally changing, since about June 1, 1994, the wage rates for unit employees, and by utilizing, since about August 1994, volunteer bartenders to perform unit work, we shall order the Respondent to make the unit employees whole for any loss of earnings attributable to its unlawful conduct. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Furthermore, having found that the Respondent has failed to execute the collective-bargaining agreement reached on or about September 22, 1994, we shall order it to do so, give retroactive effect to that agreement, and make the unit employees whole for any loss of pay or expenses incurred as a result of the Respondent's failure to execute and implement the written agreement, in the manner prescribed in *Ogle Protection Service*, supra, and as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F. 2d 940 (9th Cir. 1981), with interest on such amounts to be computed as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Veterans Foreign Wars Club, Albert Lea, Minnesota, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Soliciting employees as to whether they wished to discontinue paying union dues by dues checkoff.

(b) Soliciting employees to sign a petition to have Hotel, Motel, Hospital, Restaurant Employees & Bartenders Union Local 369, a/w Hotel Employees & Restaurant Employees International Union decertified.

(c) Unilaterally changing the wage rates paid to the unit employees. The unit includes the following employees:

> All full-time and regular part-time bartenders, janitors, cooks, waiters/waitresses, and kitchen helpers employed by members of the Association at their Albert Lea, Minnesota facilities; excluding office clerical employees, professional employees, guards and supervisors, as defined in the Act.

(d) Using volunteer bartenders to perform unit work without affording the Union an opportunity to bargain.

(e) Bypassing the Union and dealing directly with unit employees over their terms and conditions of employment.

(f) Failing and refusing to execute the collective-bargaining agreement between On-Sale Liquor Dealers of the City of Albert Lea, Minnesota and the Union reached on September 22, 1994.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make the unit employees whole for any loss of earnings due to its unilateral change in unit employee wage rates since June 1, 1994, and its use, since about August 1994, of volunteer bartenders to perform unit work, in the manner set forth in the remedy section of this decision.

(b) Execute and implement the collective-bargaining agreement between the Union and the Association reached on or about September 22, 1994, give retroactive effect to that agreement, and make the unit employees whole for any losses incurred as a result of the Respondent's failure to execute the agreement, in the manner set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Albert Lea, Minnesota, copies of the attached notice marked ''Appendix.''[2] Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT solicit employees as to whether they wished to discontinue paying union dues by dues checkoff.

WE WILL NOT solicit employees to sign a petition to decertify Hotel, Motel, Hospital, Restaurant Employees & Bartenders Union Local 369, a/w Hotel Employees & Restaurant Employees International Union.

WE WILL NOT unilaterally change the wage rates paid to unit employees. The unit includes the following employees:

> All full-time and regular part-time bartenders, janitors, cooks, waiters/waitresses, and kitchen helpers employed by members of the On-Sale Liquor Dealers of the City of Albert Lea, Minnesota at their Albert Lea, Minnesota facilities; excluding office clerical employees, professional employees, guards and supervisors, as defined in the Act.

WE WILL NOT use volunteer bartenders to perform unit work without affording the Union an opportunity to bargain.

WE WILL NOT bypass the Union and deal directly with unit employees over their terms and conditions of employment.

WE WILL NOT fail or refuse to execute the collective-bargaining agreement between the Association and the Union reached on September 22, 1994.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make our unit employees whole for any loss of earnings due to our unilateral change in unit employee wage rates since June 1, 1994, and our use, since about August 1994, of volunteer bartenders to perform unit work, in the manner set forth in the decision of the National Labor Relations Board.

WE WILL execute and implement the collective-bargaining agreement between the Union and the Association reached on or about September 22, 1994, give retroactive effect to that agreement, and make our unit employees whole for any losses incurred as a result of our failure to execute the agreement, in the manner set

forth in the decision of the National Labor Relations Board.

VETERANS FOREIGN WARS CLUB